BAR COUNCIL MALAYSIA & ANOR v. JUDY BLACIOUS AF PEREIRA

COURT OF APPEAL, PUTRAJAYA
HAMID SULTAN ABU BACKER JCA
UMI KALTHUM ABDUL MAJID JCA
ZAMANI A RAHIM JCA
[CIVIL APPEAL NO: W-02(W)-720-05-2015]
1 NOVEMBER 2016

LEGAL PROFESSION: *Admission – Petition for admission – High Court prepared to allow petition on strict condition – Petitioner fixed petition before subsequent High Court Judge without complying with strict condition ordered by previous High Court Judge – Subsequent High Court Judge found petitioner complied with strict conditional order – Whether strict condition complied with – Whether petition ought to be allowed – Whether to be dismissed – Legal Profession Act 1976, ss. 11 & 16*

CIVIL PROCEDURE: *Jurisdiction – Concurrent jurisdiction – High Court – Petition for admission as advocate and solicitor – High Court prepared to allow petition on strict condition – Petitioner fixed petition before subsequent High Court Judge without complying with strict condition ordered by previous High Court Judge – Whether petition to be dismissed - Order of judge of concurrent jurisdiction – Whether to be respected and given effect to*

The present appeal stemmed from the Bar Council's ('the first appellant') objection to the respondent's ('the petitioner') petition for admission as an advocate and solicitor. The High Court had allowed the first appellant's objection but on appeal, the Court of Appeal allowed the petition to be heard. The High Court was prepared to allow the petition on a strict conditional order ('the order') that the respondent complete eight hours of any human rights course by the Bar Council Human Rights Committee or the Perak State Bar ('the condition'). Without complying with the order, the petitioner subsequently fixed the petition before another High Court Judge ('the HCJ'). In opposing the petition, the first appellant submitted that the petitioner had not complied with the condition and sought for the dismissal of the petition. However, the HCJ found that there was compliance with the order as the petitioner had attended a human rights course organised by the United Nations which, in His Lordship's opinion, was not in any way inferior to the courses organised by the first appellant. The HCJ allowed the petition on the petitioner's undertaking that he would fulfil the condition. In the present appeal, the appellants argued that there was non-compliance with the condition and therefore, the petition ought to have been struck out.

Held (allowing appeal)
Per Hamid Sultan Abu Backer JCA delivering the judgment of the court:

(1) The petition for admission was dismissed. The failure of the petitioner to comply with the order disentitled him to the benefit of the said order. The assertion of the petitioner that he could ignore the order and/or act similar to the order would be in grave breach of the rule of law and/or ethics which would disentitle him to be admitted as an advocate to the Roll of the Malaysian Bar. (paras 10 & 13)

(2) The HCJ's order was set aside. The HCJ fell into error of facts and law when hearing the petition and failed to give sacrosanct value to the terms of the order. An order of a judge of concurrent jurisdiction in the same matter must be respected and given effect unless the HCJ was hearing an application for a variation of the order. (para 13)

Bahasa Malaysia *Headnotes*

Rayuan ini timbul berikutan bantahan Majlis Peguam ('perayu pertama') terhadap petisyen penerimaan masuk peguam bela dan peguam cara yang difailkan oleh responden ('pempetisyen'). Mahkamah Tinggi membenarkan bantahan perayu pertama tetapi atas rayuan, Mahkamah Rayuan membenarkan petisyen didengar. Mahkamah Tinggi bersedia membenarkan petisyen namun dengan perintah bersyarat ketat ('perintah tersebut') yang mengkehendaki agar responden menjalani kursus hak asasi manusia anjuran Jawatankuasa Hak Asasi Manusia Majlis Peguam atau Majlis Peguam Perak ('syarat tersebut'). Tanpa mematuhi perintah tersebut, pempetisyen seterusnya mengemukakan petisyen di hadapan Hakim Mahkamah Tinggi yang lain ('HMT'). Dalam bantahan terhadap petisyen tersebut, perayu pertama berhujah pempetisyen tidak mematuhi syarat tersebut dan menggesa mahkamah menolaknya. Walau bagaimanapun, HMT mendapati perintah tersebut telah dipatuhi kerana pempetisyen pernah menghadiri kursus hak asasi manusia anjuran Pertubuhan Bangsa-bangsa Bersatu yang, pada fikiran beliau, tidak rendah kedudukannya berbanding kursus-kursus oleh perayu pertama. HMT membenarkan petisyen berdasarkan aku janji pempetisyen bahawa dia akan memenuhi syarat tersebut. Dalam rayuan ini, perayu-perayu menghujahkan syarat tersebut tidak dipenuhi dan susulan itu, petisyen tersebut wajar dibatalkan.

Diputuskan (membenarkan rayuan)
Oleh Hamid Sultan Abu Backer HMR menyampaikan penghakiman mahkamah:

(1) Petisyen penerimaan masuk ditolak. Kegagalan pempetisyen mematuhi perintah tersebut menyebabkan dia hilang hak kelayakan untuk memanfaatkan perintah tersebut. Hujah pempetisyen bahawa dia boleh menghiraukan perintah dan/atau tindakan serupa dengan perintah

tersebut adalah satu pelanggaran serius peraturan undang-undang dan/ atau etika yang seterusnya menghilangkan hak kelayakannya untuk diterima masuk sebagai peguam cara dalam Daftarai Majlis Peguam.

(2) Perintah HMT diketepikan. HMT terkhilaf dari sudut fakta dan undang-undang apabila beliau mendengar petisyen dan gagal memberi pemberatan yang tidak dipertikaikan pada syarat-syarat perintah tersebut. Perintah seorang hakim dengan bidang kuasa bersama dalam perkara yang sama harus dihormati dan dikuatkuasakan melainkan jika HMT mendengar permohonan bagi variasi perintah.

Case(s) referred to:

Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Bar Council Malaysia (Intervener) [2016] 7 CLJ 667 CA ***(refd)***

In Re Judy Blacious AF Pereira; Petitioner [2015] 6 CLJ 1127 HC ***(refd)***

Re SRC Augustin [1972] 1 LNS 128 FC ***(refd)***

Legislation referred to:

Legal Profession Act 1976, ss. 11(1), 16

Other source(s) referred to:

Janab's Key To Criminal Procedure, Evidence, Advocacy and Professional Ethics in Malaysia and Singapore, 1st edn, 2001, p 1147

For the appellants - Malik Imtiaz Sarwar & Pavendeep Singh; M/s Malik Imtiaz Sarwar
For the respondent - Domnic Selvam; M/s Rajandran Domnic & Co

[Editor's note: For the High Court judgment, please see In Re Judy Blacious AF Pereira; Petitioner [2015] 6 CLJ 1127 (overruled).]

Reported by Najib Tamby

JUDGMENT

Hamid Sultan Abu Backer JCA:

[1] The appellants appeal against the decision of the learned High Court Judge who had allowed a recalcitrant petitioner (seeking admission to the Malaysian Bar), who had refused to obey the specific terms of an order of a previous High Court Judge in the same petition. The learned High Court Judge in the instant case in unusual terms has allowed the petition. The last paragraph of the judgment reads as follows:

> 8. As the petitioner has attended a human rights course organised by the United Nations and there is no basis to suppose that the course is in any way inferior to the courses organised by Bar Council, I do not think it fair to delay the petitioner's call any longer. Accordingly, I ruled that the petitioner had substantially complied with the court order and admitted him as an advocate and solicitor of the High Court of Malaya. Additionally, the petitioner gave an undertaking to this court that after his admission he would attend a course on human rights organised by the Bar Council.

[2] The memorandum of appeal filed by the appellants, *inter alia*, reads as follows:

> 1. The learned Judge erred in fact and/or law in allowing the Respondent to be admitted as an Advocate and Solicitor of the High Court of Malaya.
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> 2. The learned Judge erred in fact and/or law in holding that the Respondent had substantially complied with the order dated 17.12.2014 made by Justice Lee Swee Seng (the "said Order"). In the circumstances, the said Order was a conditional order and the Respondent's admission was contingent upon the fulfilment of the same. In this regard:
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> > 2.1 the learned Judge did not give due consideration to the fact that the non-fulfilment of the condition specified in the said Order resulted in the Respondent having lost the benefit of the same. This was notwithstanding the clear and unambiguous language of Order 45 Rule 10 of the Rules of Court 2012;
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> > 2.2 the condition imposed by the said Order was very specific: 8 hours of Human Rights Courses organised by the 1st Appellant. This left no room for the Respondent to take other steps towards 'conscientisation', the underlying aim of the condition, as was made clear by Justice Lee Swee Seng in the grounds of judgment. The Respondent was well aware of the terms of the said Order. As such, the learned Judge erred in not holding that the Respondent had by participating in the lectures falling outside the scope of the said Order had done so in clear defiance of what was prescribed by the same; and
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> > 2.3 had the Respondent found the said Order to have been onerous he ought to have appealed it. He did not do so. Further, he did not seek to have the said Order varied, or even seek the permission of the 1st Appellant to involve himself with the UNHCR or attend the Brickfields Asia College lecture. In the circumstances, it would have been reasonable for the learned Judge to conclude that the Respondent had acted unilaterally and contumeliously.
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> 3. The learned Judge had further erroneously imported the notion of fairness in deciding to allow the Respondent's admission especially when there was clear defiance of the said Order. As such, any notion of fairness should have been invoked against the granting of the admission and not in support of the same.

Legal Profession Act 1976 And Jurisprudence Relating To Petition For Admission

[3] At the outset, we must say that legal profession is a noble profession. Intending and/or practising advocate who has no respect for the rule of law or does not subscribe to the rule of law and/or ethics may not be eligible to be an advocate or continue to be an advocate if so decided by the relevant bodies and/or court within the framework of the Legal Profession Act 1976

(LPA 1976). (See *Dinesh Kanavaji Kanawagi & Anor v. Ragumaren N Gopal; Bar Council Malaysia (Intervener)* [2016] 7 CLJ 667); [2016] 3 AMR 775). A person who qualifies with a law degree need not necessarily be admitted to the Bar if the strict requirements are not fulfilled, though there may not be any prohibition for seeking employment as a non-practising lawyer such as company secretary or lecturer, etc. The trial court must take cognisance that it is in the public interest as well as within the spirit and intent of the LPA 1976 to ensure that those intending advocates who are admitted to the Bar are persons who have subscribed to the rule of law and ethics in their past conduct.

[4] In this respect, the views of the Bar Council or relevant bodies must not be lightly brushed off by the courts in the pretext of equity or fairness, fitting the taste of individual judges. There are a number of bodies including the Bar Council which have been endowed with a statutory right to object. (See s. 16 of the LPA 1976). Court must appreciate that one can become a law graduate but not a practicing lawyer if he cannot satisfy the requirements of the LPA 1976. The test for admission is one of qualification and discipline. Equitable and/or fairness principles, etc. have no role to play in considering a petition for admission within the framework of LPA 1976 and in this respect, previous legislation for admission to the Bar and the case laws under that legislation has no relevance. (See *Re SRC Augustin* [1972] 1 LNS 128; [1973] 1 MLJ 208). The most relevant sections in LPA 1976 for the court to determine if the petitioner is a fit and proper person to be admitted to the Bar according to law and not according to justice and/or fairness are ss. 11 and 16 of the LPA 1976. Admission is not mandatory and the court has no discretion in the matter. Section 11(1) of the LPA 1976 states:

Section 11. Qualifications for admission

(1) Subject to section 14, a qualified person may be admitted as an advocate and solicitor if he:

(a) has attained the age of eighteen years;

(b) is of good character and

(i) has not been convicted in Malaysia or elsewhere of a criminal offence as would render him unfit to be a member of his profession, and in particular, but not limited to, an offence involving fraud or dishonesty;

(ii) has not been adjudicated bankrupt and has not been found guilty of any of the acts or omissions mentioned in paragraph (a), (b), (c), (e), (f), (h), (k) or (l) of subsection (6) of section 33 of the Bankruptcy Act 1967 [Act 360];

(iii) has not done any other act which, if being a barrister or solicitor in England, would render him liable to be disbarred, disqualified or suspended from practice; or

A (iv) has not been, or is not liable to be, disbarred, disqualified or suspended in his capacity as a legal practitioner in any other country;

(c) is either a Federal citizen or a permanent resident of Malaysia;

(d) has satisfactorily served in Malaysia the prescribed period of
B pupillage for qualified persons.

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Section 16. Filing Of Petition And Objection

(1) A copy each of the petition and the affidavit required to be filed
C under s. 15 together with the true copies of each document exhibited pursuant to that section shall, within seven days of the filing thereof in the Registrar's Office, and not less than ten days or such shorter period as the court may allow before the date fixed for hearing the petition, be served on the Attorney General, the Bar Council and the State Bar Committee of the State in which the pupil
D has served any part of his period of pupillage.

(2) If the Attorney-General, the Bar Council or any State Bar Committee intends to object to any petition, there shall be served on the petitioner and filed in the Registrar's Office, not less than three clear days or any shorter period as the court may allow before
E the date fixed for hearing the petition, a notice of objection which shall set out in brief terms the grounds of objection.

(3) On a notice of objection being filed the petition shall be fixed for hearing within one month or as soon as may be before a judge of the High Court.

F (4) The Attorney-General, the Bar Council or the State Committee need not be represented at the hearing of any petition unless the Attorney-General, the Bar Council or the State Bar Committee, as the case may be, intends to object to that petition, but no order shall be made upon any petition unless the court is satisfied that the petition, affidavit and true copies of each document have been duly
G served as required by subsection (1).

[5] The learned author of *Janab's Key To Criminal Procedure, Evidence, Advocacy and Professional Ethics in Malaysia and Singapore* (1st edn – 2001) at p. 1147 observes:

H Ethics generally refers to a set of moral principles. According to Solomon, the etymology of ethics suggests its basic concerns: (a) individual character, including what it means to be a good person, and (b) the social rules that govern and limit our conduct, especially the ultimate rules concerning right and wrong, which we call morality.

I Professional ethics in respect of lawyers is the set of moral principles which lays down certain duties for the observance of its members which they owe to the society, to the court, to the profession, to the public, to his client etc, befitting professional standards of conduct.

In *Re GH Conaghan* (1961) MLJ 81 it was stated that the legal profession occupies by law a privileged position. The continued existence of that position can only be justified if every individual member of the profession conforms to certain standards.

[6] In essence, if there is evidence to suggest that a person who is seeking admission to the Malaysian Bar has credibility or ethical issues or is a person who does not subscribe to the rule of law then the LPA 1976 imposes a duty on the court to reject the admission.

[7] In this respect, the wording of s. 4 of the previous legislation under the Advocates And Solicitors Ordinance No. 4/1947 and s. 11 of the LPA 1976 are not one and the same. Under the previous legislation, there was a discretion vested in the court for the purpose of admission. Under LPA 1976, that discretion has been removed and in consequence the case of *Re SRC Augustin (supra)* must be read with caution. Section 4 of Advocates And Solicitors Ordinance No. 4/1947 reads as follows:

4(1) Subject to the provisions of this Ordinance the Court may at its discretion admit and enrol as an advocate and solicitor

(a) any qualified person; or

(b) any articled clerk who is qualified under this Ordinance.

(2) A person shall not be disqualified by sex from being admitted and enrolled as an advocate and solicitor.

Brief Facts

[8] The petition for admission of the respondent has a chequered history. It all originates from the objection of the Bar Council on the grounds that when the petitioner was serving as a police officer he did not in our words subscribe to the rule of law and/or ethics. It is unnecessary for us to deal with his past conduct and/or the objection of the Bar Council in the first instance. Justice Zaleha Yusof had allowed the Bar Council's objection and on appeal to the Court of Appeal, the appellant says, *inter alia*, the Court of Appeal, had on technical grounds, had set aside the order and allowed the petition to be heard. Subsequently, Justice Lee Swee Seng heard the petition and was prepared to allow the petition strictly based on the terms and condition set out by the court.

[9] The petitioner, without complying with the orders made by Justice Lee Swee Seng, fixed the petition for continuous hearing before the learned judge. The learned judge took an erroneous view in law and fact and subscribed to the contemptuous submission of the respondent who had asserted that he had acted something similar to the order made by Justice Lee, though admitting that he did not follow orders of the court.

[10] In our view, the failure of the respondent to comply with the order of the court disentitles him to the benefit of the said order. To compound the problem, the contemptuous submission of the respondent asserting that he

A can ignore the order and/or act similar to the order of the court will be in grave breach of the rule of law and/or ethics which will disentitle him to be admitted as an advocate to the Roll of the Malaysian Bar.

[11] It is well settled that any order of the court must be strictly complied with. For any reason, a party to the order is not able to comply with the order
B may seek leave of the court to vary the terms of the order. What a party cannot do is to unilaterally vary the terms of the order and assert that he is justified in varying the terms of the order. Such a conduct is unacceptable and no court should justify and support a litigant who *prima facie* had not complied with an order of court, and also when he asserts that he is right in
C not complying with the order.

[12] In essence, this is what the whole appeal is about. The facts of this case were meticulously set out in three of the judgments and two has been reported. (See (i) [2015] 6 CLJ 1127; (ii) [2014] 1 LNS 816). To save judicial time, we will set out the facts of the case as set out by learned counsel for
D the Bar Council in *verbatim* and it reads as follows:

> 1. This outline submission sets out the main points of argument of counsel for the Appellants in respect of the appeal against the decision of S.M Komathy Suppiah J (the "learned Judge") made on 31.03.2015 (the "HC Order"). The HC Order arose from the following:
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> E
> 1.1 Lee Swee Seng J had on 17.12.2014 allowed the Respondent's petition for admission by way of Petition No. 18-730-07-2012 (the "Petition") on the condition that the Respondent complete eight (8) hours of any human rights seminar, forum, activity or program organised by the Bar Council Human Rights Committee or the
> F Perak State Bar (the "Condition") (the "LSS HC Order").
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> 1.2 It was plain that the LSS HC Order was a conditional order. The Petition was subsequently fixed before the learned Judge on 25.03.2015 to enable the Respondent to show that he had complied with the Condition and if so, to allow his Petition. On the request of the 1st Appellant, the learned Judge adjourned the Petition to
> G 31.03.2015 to enable the 1st Appellant to inquire whether there had been compliance of the Condition. The 1st Appellant took the position that the Respondent had not strictly complied with the Condition and prayed that the Petition be dismissed.
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> 1.3 However, the learned Judge found that there was substantial
> H compliance with the LSS HC Order and allowed the Respondent's petition for admission on the Respondent's personal undertaking that he would fulfil the Condition.
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> **II Material Facts**
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> 2. The Respondent filed the Petition on 23.07.2012.
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> I
> 3. On or about 19.10.2012, the Respondent was "short called" under sections 36(2)(a) and (b), Legal Profession Act 1976 ("LPA"). The 1st Appellant had through its letter of 08.10.2012 indicated that it had no objections to the same.

4. Through its letter of 15.03.2013, the 1st Appellant informed the Respondent that it would be objecting to his admission as an Advocate and Solicitor of the High Court of Malaya pursuant to section 16, LPA on the ground that he was not a fit and proper person for admission to the Bar. The Notice was annexed to the said letter. It reads as follows:

> SILA AMBIL PERHATIAN BAHAWA Majlis Peguam, dengan ini memberi notis untuk membantah permohonan Petisyen untuk Penerimaan masuk sebagai peguambela dan peguamcara bertarikh 23 Julai 2012 atas alasan bahawa pempetisyen bukan seorang yang layak dan sesuai dibawah Seksyen 11(1)(b) Akta Profession Undang-Undang 1976.

On 15.05.2013 and 16.05.2013, the Respondent sat for the Ethics and Professional Standards course and examination organised by the Bar Council. The Respondent passed the said examination (this was his second attempt).

6. On 03.06.2013, the 1st Appellant entered a Caveat against the admission of the Respondent. On 06.06.2013, the Caveat was served on the Respondent. The Caveat reads as follows:

> 1. Resolusi Majlis Peguam bertarikh 15 Mei 2009, panggilan untuk meletakkan jawatan DSP Judy Blacious Pereira. Sesalinan Resolusi bertarikh 15 Mei 2009 dilampirkan di sini dan bertanda "A".
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> 2. Siasatan SUHAKAM yang menyoal kredibiliti Judy Blacious Pereira sebagai saksi. Sesalinan laporan Suhakam bertarikh 23 April dilampirkan di sini dan bertanda "B".

7. The Respondent had on 22.07.2013 applied to strike out the Notice and Caveat. The same was dismissed by Justice Zaleha Yusof on 05.12.2013. Having dismissed the same, Justice Zaleha Yusof proceeded to hear the Notice and Caveat separately from the Petition on the suggestion made by solicitors for the Respondent. On 15.01.2014 Justice Zaleha Yusof upheld the objection of the Appellants and found that the Respondent was not a fit and proper person under section 11(1)(b), LPA. The Petition was struck out. The grounds of decision of the learned Judge are reported in *In Re: Judy Blacious A F Pereira* [2014] 1 LNS 816.

8. The Respondent appealed to the Court of Appeal *vide* Civil Appeal No. W-02-296-02/2014 ("Appeal No. 296"). The Respondent contended that the decision of the High Court was defective as it was made in a manner consistent with the requirements of the LPA; it was the contention of the Respondent that the Notice and Caveat should have been heard together with the Respondent's Petition for admission as an advocate and solicitor. This was despite the Respondent having been party to the suggestion that the objections be heard separately from the hearing of the Petition.

9. The Court of Appeal allowed Appeal No. 296 and directed that the Petition be fixed for hearing. In coming to this decision, the Court of Appeal did not consider the merits of the decision of Zaleha Yusof J. The Court of Appeal gave liberty to the Appellants to reventilate its objection during the hearing of the Petition.

10. The matter was remitted to the Ipoh High Court. Out of an abundance of caution, the 1st Appellant proceeded to file a second Notice of Objection dated 3.11.2014 against the admission of the Respondent as advocate and solicitor (the "2nd Notice"). The 2nd Notice was identical to the Notice.

11. The hearing of the Petition took place on 07.11.2014 and 17.12.2014. Significantly, despite the fact that the Court of Appeal had given the Appellants liberty to reventilate its objection, the Appellants attempted to argue that the objection was *res judicata*. To this end, the Appellants filed affidavits explaining the events stated in paragraph 8 and 9 above, exhibiting a transcript of the proceedings in the Court of Appeal. It is pertinent to note that the Respondent was aware of the directions of the Court of Appeal as he had been present during arguments in the Court of Appeal.

12. On 17.12.2014, the LSS HC Order was made. This however was subject to the Condition that Lee Swee Seng J referred to as "reflective conscientisation". The Respondent was given a time frame of three (3) months to comply with the Condition.

13. The Petition was fixed on 25.03.2015 for the admission of the Respondent as Advocate and Solicitor. The learned Judge however deferred the admission to 31.03.2015. It became apparent to the Appellants by way of the Respondent's affidavit affirmed on 20.03.2015 that the Respondent had not strictly adhered to the Condition. Instead, the Respondent attended a human rights program conducted by Brickfields Asia College and joined a volunteer program conducted by UNHCR, both totalling eight (8) hours. The Respondent's reason for the same was the 1st Appellant's conduct in not reverting to the Respondent on the human rights courses that were provided. It has to be borne in mind that there was only a single attempt made by the Respondent as such.

14. The learned Judge directed parties to file affidavits pertaining to the matters stated in the aforementioned paragraph. On 31.03.2015, when the Petition was set for hearing, the Appellants contended that the Petition ought to be struck out due to the non-compliance of the Condition. That being the case, the Respondent had lost the benefit derived from the LSS HC Order ie, his admission as Advocate and Solicitor.

15. Notwithstanding, the learned Judge made the HC Order but on the Respondent's personal undertaking that the Condition had to be complied with after his admission. The HC Order provided:

> DAN SETELAH MENDENGAR Peguam bagi Pempetiyen DAN SETELAH Pempetisyen memberi akujanji untuk mengikuti sebarang program hak asasi manusia yang di anjurkan oleh Majlis Peguam Malaysia dan/atau Jawatankuasa Peguam Negeri Perak selama lapan (8) jam keseluruhannya di dalam tempoh 3 bulan dari tarikh perintah ini. ADALAH DIPERINTAHKAN bahawa JUDY BLACIOUS S/O AF PEREIRA yang tersebut di atas diterima masuk dan didaftarkan sebagai seorang Peguambela dan Peguamcara Mahkamah Tinggi Malaya.

16. Dissatisfied with the HC Order, the Appellants proceeded to appeal against the same to this Honourable Court by way of the Notice of Appeal dated 22.04.2015 (the "NOA").

17. Prior to filing the NOA, the Appellants had on 14.04.2015 filed a notice of application to stay the HC Order (the "Stay Application"). Subsequent to this, the learned Judge had on two consecutive dates, ie, 20.05.2015 and 27.05.2015 allowed an interim order prohibiting the Respondent from taking any steps to obtain his Practicing Certificate and Sijil Annual pending the disposal of the Stay Application. The learned Judge on 10.06.2015 eventually dismissed the said application.

18. An application for stay of the HC Order has been filed in this Honourable Court by way of the Notice of Motion dated 06.07.2015. The said motion is fixed for hearing together with the appeal herein.

III Submission

19. It is submitted that in arriving at the HC Order, the learned Judge had effectively found that there was non-compliance with the Condition. Had that not been the case, it would have been wholly unnecessary to obtain the Respondent's undertaking to comply with the same after his admission as an Advocate and Solicitor. As such, the only appropriate order that the learned Judge should have made in the circumstances was to strike out the Petition.

[13] We have read the appeal record and the submissions of learned counsel. After giving much consideration to the submission of learned counsel for the respondent, we take the view that the appeal must be allowed. Our reasons, *inter alia*, are as follows:

(a) We agree with the submission of learned counsel for the appellants that the learned judge gravely fell into error of law and fact when hearing the petition and failed to give sacrosanct value to the terms of the order made by Justice Lee. An order of a judge of concurrent jurisdiction in the same matter must be respected and given effect to unless the learned judge was hearing an application for variation of the order. On this ground alone, the appeal in our view should be allowed as of right and the order made by the High Court must be set aside.

(b) The other issue which obviously arises in consequence of the contemptuous submission of the respondent which we have stated earlier requires the appellate court to rule not only to set aside the order of the High Court but the petition for admission to be dismissed.

[14] For reasons stated above, the appeal is allowed. The order of the High Court dated 17 December 2014 is set aside and the petition dated 20 March 2015 is dismissed with no order as to costs. Deposit to be refunded.

We hereby ordered so.